

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/04/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2001-019484

FILED: \_\_\_\_\_

SHAWNA DUNLAP

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P O BOX 564  
LITCHFIELD PARK AZ 85340-  
0000

v.

SUSAN HODGES

EDWARD J SUSEE

REMAND DESK CV-CCC  
TOLLESON JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

The first issue raised by the Appellant is whether the Tolleson Justice Court erred in failing to separate the hearings for Carolyn Bauder and Susan Hodges, or distinguish which evidence pertains to which defendant. This seems to suggest that there was a misjoinder of parties, that is was the court that joined the parties; the issue of misjoinder can not be

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raised for the first time on appeal.<sup>1</sup> However, this was not a misjoinder of parties, for the parties waived separate hearings and agreed to consolidate the matters.<sup>2</sup> Once parties consolidate, agreeing to a joinder of the claims, the stipulation amounts to a waiver of error and the matter cannot now be considered on appeal.<sup>3</sup> Therefore, the lower court did not err.

The remaining issues concern sufficiency of evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>4</sup> All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.<sup>5</sup> If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.<sup>6</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>7</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>8</sup> The Arizona Supreme Court has explained in State v. Tison<sup>9</sup> that "substantial evidence" means:

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<sup>1</sup> Young Mines Co. v. Citizens' State Bank 37 Ariz. 521, 296 P. 247 (1931).

<sup>2</sup> See transcript pg. 2.

<sup>3</sup> State v. Bravo, 131 Ariz. 168, 639 P.2d 358 (1981).

<sup>4</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>5</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>6</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>7</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>8</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>9</sup> See footnote 6.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>10</sup>

Upon examining the record, I find that substantial evidence exists to support the action of the lower court.

IT IS THEREFORE ORDERED affirming the decision of the lower court.

IT IS FURTHER ORDERED remanding this case back to the Tolleson Justice Court for all further proceedings.

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<sup>10</sup> State v. Tison, 129 Ariz. at 553, 633 P.2d at 362.  
Docket Code 019